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No. 15-339

In the Supreme Court of the United States

MICHAEL ROSS, PETITIONER

v.

SHAIDON BLAKE

ON WRIT OF CERTIORARI
TO THE UNITED STATES COURT OF APPEALS
FOR THE FOURTH CIRCUIT

BRIEF FOR THE UNITED STATES AS AMICUS CURIAE SUPPORTING PETITIONER

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QUESTION PRESENTED

Whether the statutory exhaustion requirement of the Prison Litigation Reform Act of 1995, 42 U.S.C. 1997e(a), includes an unwritten exception for "special circumstances" that relieves an inmate of his obligation to exhaust available administrative remedies when it would have been objectively reasonable for him to believe mistakenly that he satisfied exhaustion by participating in an internal investigation.

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INTEREST OF THE UNITED STATES

The question in this case is whether the statutory exhaustion requirement of the Prison Litigation Reform Act of 1995, 42 U.S.C. 1997e(a), includes an unwritten exception for "special circumstances" that relieves an inmate of his obligation to exhaust available administrative remedies when it would have been objectively reasonable for him to believe mistakenly that he satisfied exhaustion by participating in an internal investigation. The United States has a substantial interest in the resolution of that question. Inmates frequently file suits against the United States, the Bureau of Prisons, or prison officials raising claims related to conditions of confinement in federal correctional institutions. See *Porter* v. *Nussle*, 534 U.S. 516, 524-525 (2002). Under the PLRA, "federal prisoners suing under *Bivens* v. *Six Unknown*

Fed. Narcotics Agents, 403 U.S. 388 (1971), must first exhaust inmate grievance procedures just as state prisoners must exhaust administrative processes" before suing under 42 U.S.C. 1983. *Nussle*, 534 U.S. at 524. Federal regulations detail the grievance process for federal prisoners. *E.g.*, 28 C.F.R. Pt. 542, Subpt. B (Administrative Remedy Program). The United States has participated as amicus curiae in prior cases involving the PLRA's interpretation. See *Coleman* v. *Tollefson*, 135 S. Ct. 1759 (2015); *Woodford* v. *Ngo*, 548 U.S. 81 (2006); *Nussle*, *supra*; *Booth* v. *Churner*, 532 U.S. 731 (2001).

STATUTORY PROVISION INVOLVED

The PLRA's exhaustion provision provides:

> No action shall be brought with respect to prison conditions under section 1983 of this title, or any other Federal law, by a prisoner confined in any jail, prison, or other correctional facility until such administrative remedies as are available are exhausted.

42 U.S.C. 1997e(a).

STATEMENT

1. Respondent is an inmate in the Maryland Division of Correction. He alleges that two prison guards, James Madigan and petitioner Michael Ross, subjected him to the use of excessive force. Pet. App. 30.

The underlying incident occurred on June 21, 2007, while the prison guards were escorting respondent from his cell to the segregation unit because of a disciplinary infraction. Pet. App. 3, 30. Petitioner handcuffed respondent's hands behind his back, then held him by the arm and escorted him. *Id.* at 3. Madigan followed. *Ibid.* As they were beginning down a flight

of stairs, Madigan "shoved [respondent] from behind." *Ibid.* Petitioner told Madigan that he had respondent under control. *Ibid.* At the bottom of the stairs, Madigan pushed respondent again then "punched him at least four times in the face in quick succession," paused, then hit him again. *Id.* at 4. During this time, petitioner was holding respondent's arm. *Ibid.*; see J.A. 154-161.

Madigan ordered the hallway officer to mace respondent. Pet. App. 4. She refused. *Ibid.* Petitioner told her to radio for assistance, which she did. *Ibid.* Madigan and petitioner then "took [respondent] to the ground." *Id.* at 31. Petitioner "dropped his knee" on respondent's chest and the officers restrained him until help arrived. *Ibid.* A response team arrived and secured the scene. J.A. 201-202. Respondent initially declined medical treatment, Pet. App. 4, but alleges that the attack worsened nerve damage he had suffered previously, J.A. 16, 28, 146. Petitioner sustained injuries to his knees. J.A. 24.

2. Maryland has a three-step inmate grievance process. Under the "Administrative Remedy Procedure," a prisoner initiates the process by filing a request for an administrative remedy with the warden. Pet. App. 8. At the time of the incident here, prisoners were required to submit such a request within 15 days of the incident or the date the prisoner first learned of it. *Evans* v. *State*, 914 A.2d 25, 69 (Md. 2006) (citing Md. Division of Correction Directive No. 185-101, Change Notice 2-01 (effective Feb. 1, 2001)), cert. denied, 552 U.S. 835 (2007). The warden must respond within 30 days. *Ibid.* If the warden denies the request, the prisoner can appeal to the Commissioner of Correction, and again to the Inmate Griev-

ance Office, before proceeding to court. Pet. App. 8. The Administrative Remedy Procedure is available for "all types of complaints," subject to four narrow exceptions. *Id.* at 77. None applies here. *Id.* at 17 (Agee, J., dissenting). Agency directives provide that inmates otherwise must use the Administrative Remedy Procedure for any "institutionally related" complaints, and that "[e]very inmate" may submit such a request. J.A. 312-313 (Md. Division of Correction Directive No. 185-002 (Feb. 15, 2005)). In cases where the Administrative Remedy Procedure is unavailable, inmates can file a grievance directly with the Inmate Grievance Office within 30 days of the underlying incident. Pet. App. 58-59. These procedures allow various forms of relief, including "compensation." See J.A. 320 (defining "relief" to include "compensation"); Md. Code Regs. 12.07.01.10(D) (2005) ("monetary damages" available via the Inmate Grievance Office).

It is undisputed that respondent never filed a request for a remedy under the Administrative Remedy Procedure or a grievance directly with the Inmate Grievance Office. Pet. App. 57; see *id.* at 39-40. Instead, respondent reported the incident to a senior correctional officer, Captain Calvin Vincent, who notified the Correctional Service's Internal Investigative Unit. *Id.* at 4; J.A. 191, 203-204. Vincent's own preliminary investigation found that Madigan had used excessive force and had improperly failed to heed petitioner's statements that he "had the inmate under control." J.A. 204. Vincent then submitted a criminal investigation report with the Internal Investigative Unit, identifying Madigan as the only suspect. J.A. 186-190. An investigation was conducted, and respondent provided a witness statement. Pet. App. 31;

see J.A. 228-230. The investigator's final report found that Madigan had engaged in conduct unbecoming of an officer by assaulting respondent while he was handcuffed from behind. Pet. App. 4-5; see J.A. 191-195 (reproducing the final report). Madigan resigned in lieu of being fired, Pet. App. 32, and the internal investigator recommended that the case be closed with no further action. J.A. 195. The report did not make any findings as to whether petitioner had engaged in wrongdoing, and did not recommend him for any disciplinary action. See J.A. 191-195.

Respondent has explained that he never filed any request for an administrative remedy because "[t]he warden instantly jumped in and involved himself" and "got an investigation going." J.A. 173-174. Respondent did not read the regulations governing the Administrative Remedy Procedure and the Inmate Grievance Office, or seek information about the relationship between the grievance process and the internal investigation. *Ibid.*

3. On September 8, 2009, respondent sued Madigan, petitioner, and several other defendants under 42 U.S.C. 1983. Pet. App. 32. Petitioner raised exhaustion as an affirmative defense, and the district court dismissed respondent's suit against him on that basis. *Id.* at 55-61.[1] The district court held that respondent

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[1] Petitioner did not raise exhaustion in his initial answer. Respondent consented, however, to the filing of an amended answer on the condition that petitioner consent to the filing of an amended complaint. Pet. App. 5. Petitioner invoked exhaustion in that amended answer. *Id.* at 5-6. The district court denied a motion by respondent to strike the exhaustion defense on the grounds that it had been waived. *Id.* at 51-55. Respondent subsequently filed an amended complaint, and petitioner reasserted exhaustion in his answer to the amended complaint. *Ibid.*

could have filed a grievance under Maryland law, but that he had failed to do so. *Id.* at 56-59. It accordingly dismissed, explaining that "'there is no doubt that the PLRA's exhaustion requirement is mandatory.'" *Id.* at 55 (citation omitted).

Madigan failed to raise exhaustion as a defense, Pet. App. 35-36, and respondent prevailed after a jury trial, obtaining a judgment for $50,000 in damages. J.A. 299. All other defendants were dismissed. Pet. App. 30. Those judgments are no longer at issue in this case.

4. Respondent appealed the district court's grant of summary judgment to petitioner, and the court of appeals reversed and remanded. Pet. App. 1-16. The court of appeals did not disagree that respondent had failed to exhaust administrative remedies that were available to him. See *id.* at 9-10. The court of appeals instead held that respondent's failure to exhaust was "justified" on the grounds of a "special circumstances" exception. *Id.* at 9 (quoting *Giano* v. *Goord*, 380 F.3d 670, 676 (2d Cir. 2004)). Specifically, the court held that (1) "the prisoner was justified in believing that his complaints in the disciplinary appeal *procedurally* exhausted his administrative remedies because the prison's remedial system was confusing," and (2) "the prisoner's submissions in the [internal investigation] process exhausted his remedies *in a substantive sense* by affording corrections officials time and opportunity to address complaints internally." *Id.* at 10 (quoting *Macias* v. *Zenk*, 495 F.3d 37, 43 (2d Cir. 2007)).

The court of appeals recognized that respondent had not examined the regulations or the prisoner handbook. Pet. App. 12 n.4. But it reasoned that his subjective knowledge was irrelevant. Instead, the

pertinent inquiry was whether it would have been "objectively reasonable" for a prisoner to mistakenly believe that he had exhausted. *Ibid.* The court also concluded that the internal investigation "satisfied the substantive component of the exception." *Id.* at 11. It reasoned that the Internal Investigation Unit conducted a year-long investigation culminating in a report, and that Madigan chose to resign rather than face dismissal. *Ibid.*

Judge Agee dissented. Pet. App. 16-28. He stated that "[j]udge-made exceptions may be permissible when interpreting judge-made exhaustion doctrines, but they hardly seem appropriate where, as here, we are dealing with Congressional text." *Id.* at 21 (citation omitted). He also stated that "substantial compliance and proper exhaustion are not the same," and that a reasonable-belief exception "is substantial compliance by another name." *Id.* at 20-21. Judge Agee further concluded that respondent had failed to meet even the majority's standard for application of a "new reasonable-interpretation exception." *Id.* at 22; see *id.* at 23-27.

SUMMARY OF ARGUMENT

Respondent's suit should have been dismissed because he failed to properly exhaust administrative remedies that were available to him. The PLRA requires *proper* exhaustion of available remedies, meaning that a prisoner must (1) "'us[e] all steps that the agency holds out'"; and (2) do so in "compliance with [the] agency's deadlines and other critical procedural rules." *Woodford* v. *Ngo*, 548 U.S. 81, 90 (2006) (citation omitted). Respondent has fulfilled neither requirement. Respondent could have filed a request for an administrative remedy, but never did, and that is

due solely to his own mistake or ignorance. The PLRA's exhaustion provision therefore bars this case.

The PLRA does not permit courts to create a new, unwritten exception to excuse a failure to exhaust under "special circumstances." Not only does this exception lack any textual basis, but also *Woodford* forecloses it: A prisoner's failure to pursue a prison's available procedures for providing an administrative remedy constitutes a failure to exhaust *properly*. Moreover, *Woodford* rejected the notion that a prisoner could sue notwithstanding a failure to exhaust properly, provided that the failure was not "deliberate" but instead was the result of a mistake. See 548 U.S. at 97-98. The court of appeals' "reasonable mistake" approach would essentially restore the nontextual pre-*Woodford* exception that *Woodford* disallowed.

The court of appeals' approach is also fundamentally inconsistent with the PLRA's text, history, and purpose. Congress made the PLRA's exhaustion requirement mandatory to replace a dysfunctional scheme under which, among other things, courts had discretion to excuse a failure to exhaust when they believed it would be "appropriate and in the interests of justice" and exhaustion was never required if a court concluded that a prison's procedures were not "plain." *Woodford*, 548 U.S. at 84-85 (citations omitted). Creating a new, unwritten exception for "special circumstances" effectively restores the freewheeling discretion that Congress eliminated. And the conclusion that "special circumstances" exist when procedures are "confusing" and subject to reasonable debate effectively restores the now-defunct requirement that prison regulations be "plain."

To be sure, the PLRA is primarily designed to stop the "disruptive tide of frivolous prisoner litigation," *Woodford*, 548 U.S. at 97, and the internal investigation here confirms that respondent's claims are not frivolous: the internal investigation here concluded that another officer wrongfully assaulted respondent. Indeed, respondent has since won a money judgment of $50,000 against that officer. But the internal investigation conducted here had a different focus than a request for an administrative remedy would have had: It did not focus on the extent of respondent's injuries, did not focus on whether petitioner's conduct was wrongful, and did not ask whether respondent should be given damages or any other kind of remedy. More fundamentally, the PLRA does not include an exception for unexhausted claims that are potentially meritorious. And "[p]rocedural requirements established by Congress for gaining access to the federal courts are not to be disregarded by courts out of a vague sympathy for particular litigants." *Baldwin Cnty. Welcome Ctr.* v. *Brown*, 466 U.S. 147, 152 (1984) (per curiam). The court of appeals below disregarded the PLRA's express mandate, and this Court should reverse.

ARGUMENT

A. The PLRA Requires Proper Exhaustion Of Available Administrative Remedies.

Before filing suit to challenge prison conditions under federal law, a prisoner must properly exhaust available administrative remedies. The PLRA provides that "[n]o action" may be brought by a prisoner under federal law "with respect to prison conditions * * * until such administrative remedies as are available are exhausted." 42 U.S.C. 1997e(a). The text

contains only one exception: A prisoner need not exhaust remedies unless they are "available." *Ibid.* Exhaustion of available remedies under the PLRA is "mandatory" and "required for any suit challenging prison conditions." *Woodford* v. *Ngo*, 548 U.S. 81, 85 (2006); accord *Jones* v. *Bock*, 549 U.S. 199, 211 (2007) ("There is no question that exhaustion is mandatory under the PLRA."); *Porter* v. *Nussle*, 534 U.S. 516, 532 (2002) ("[T]he PLRA's exhaustion requirement applies to all inmate suits about prison life."). Nor will "exhaustion *simpliciter*" suffice. *Woodford*, 548 U.S. at 88, 93. The PLRA's mandate is *proper* exhaustion of available remedies. *Id.* at 84. That means that a prisoner must not merely use all available steps the agency holds out, he must do so in compliance with the agency's "deadlines and other critical procedural rules." *Id.* at 90.[2]

The PLRA's history underscores that Congress deliberately required proper exhaustion of available administrative remedies in all cases. "Congress enacted the [PLRA] in 1996 in the wake of a sharp rise in prisoner litigation in the federal courts," and the PLRA's "invigorated" exhaustion provision is "[a] centerpiece of the PLRA's effort to reduce the quantity of prisoner suits." *Woodford*, 548 U.S. at 84 (quoting *Nussle*, 534 U.S. at 524) (citation and alterations omitted). Before 1980, prisoners asserting constitutional claims in federal courts had no obligation to

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[2] In contexts that are not relevant here, federal law mandates that agency procedures meet certain criteria. For example, under regulations implementing the Prison Rape Elimination Act of 2003, Pub. L. No. 108-79, 117 Stat. 972, prison regulations "shall not impose a time limit" on the filing of grievances regarding an allegation of sexual abuse. 28 C.F.R. 115.52(b)(1).

exhaust administrative remedies. See *Wilwording* v. *Swenson*, 404 U.S. 249, 251 (1971) (per curiam). In 1980, Congress enacted a "weak exhaustion provision" under the Civil Rights of Institutionalized Persons Act (CRIPA), Pub. L. No. 96-247, 94 Stat. 349. *Woodford*, 548 U.S. at 84. Exhaustion under CRIPA was "in large part discretionary." *Nussle*, 534 U.S. at 523. Specifically, CRIPA's exhaustion provision authorized district courts to stay a state prisoner's suit under Section 1983 for up to 90 days to require the prisoner to exhaust "such plain, speedy, and effective administrative remedies as are available," and only if those remedies met federal standards and "the court believe[d] that [requiring exhaustion] would be appropriate and in the interests of justice." CRIPA § 7(a), 94 Stat. 352.

CRIPA failed to stem the overwhelming flow of prisoner suits, and Congress responded with the PLRA to "bring this litigation under control." *Woodford*, 548 U.S. at 84. In particular, the PLRA's exhaustion provision "differs markedly" from the prior scheme. *Nussle*, 534 U.S. at 524. "Exhaustion is no longer left to the discretion of the district court." *Woodford*, 548 U.S. at 85. "All 'available' remedies must now be exhausted; those remedies need not meet federal standards, nor must they be 'plain, speedy, and effective.'" *Nussle*, 534 U.S. at 524. The PLRA thus makes exhaustion mandatory by "eliminat[ing] * * * the discretion to dispense with administrative exhaustion." *Booth* v. *Churner*, 532 U.S. 731, 739 (2001).

This Court has repeatedly rejected efforts by lower courts to create unwritten, discretionary exceptions to the PLRA's mandate. For example, under CRIPA's

"efficacy" exception, prisoners were not required to exhaust when they sought only money damages but the relevant administrative scheme could not provide money damages. See *McCarthy* v. *Madigan*, 503 U.S. 140, 150-151 (1992). Notwithstanding that the PLRA eliminated the "efficacy" exception, some lower courts held that it retained *Madigan*'s rule. They reasoned that the PLRA codified common-law exhaustion doctrine and thus implicitly included the well-settled "futility" exception. See *Nyhuis* v. *Reno*, 204 F.3d 65, 69 (3d Cir. 2000) (describing caselaw). This Court unanimously rejected that view, holding that Congress's elimination of the "efficacy" exception mandated exhaustion without regard to *Madigan*. *Booth*, 532 U.S. at 734. This Court explained that "we will not read futility or other exceptions into statutory exhaustion requirements where Congress has provided otherwise." *Id.* at 741 n.6.

Similarly, in *Woodford*, this Court confirmed that the PLRA does not include an exception for constitutional claims. See 548 U.S. at 91-92 n.2. "[W]e fail to see how such a carve-out would serve Congress' purpose of addressing a flood of prisoner litigation in the federal courts * * * when the overwhelming majority of prisoner civil rights and prison condition suits are based on the Constitution." *Ibid.* And in *Nussle*, this Court held that the PLRA does not contain an exception for excessive-force claims. 534 U.S. at 532 ("[T]he PLRA's exhaustion requirement applies to all inmate suits about prison life.").

To be sure, the Court's decisions also make clear that "Congress framed and adopted" the PLRA's exhaustion provision with "administrative law in mind." *Woodford*, 548 U.S. at 102. But both *Booth*

and *Woodford* illustrate that courts do not have the same flexibility in assessing exhaustion under the PLRA that they would have in evaluating exhaustion under administrative law. And for good reason. "Most applications of the [exhaustion] doctrine [in administrative law] are based on common law reasoning." 2 Richard J. Pierce, Jr. *Administrative Law Treatise* § 15.3, at 1241 (5th ed. 2010) (Pierce). But the PLRA is statutory. "Congress is vested with the power to prescribe the basic procedural scheme under which claims may be heard in federal courts," *Patsy* v. *Board of Regents*, 457 U.S. 496, 501 (1982), and a "court may not disregard [such] requirements at its discretion," *Hallstrom* v. *Tillamook Cnty.*, 493 U.S. 20, 31 (1989). It is accordingly well-settled that, "[w]hile the common law duty to exhaust administrative remedies is flexible and subject to pragmatic exceptions, a duty to exhaust administrative remedies that is imposed by a statute is mandatory. A court has no discretion to excuse a petitioner from complying with a statutorily imposed duty to exhaust." Pierce § 15.3, at 1241; see *id.* at 1263 ("Judges cannot excuse a petitioner from its duty to exhaust a remedy that is made mandatory by a statute.").[3]

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[3] In certain narrow circumstances, courts have waived "some (but not all) of the procedural steps" required for exhaustion of Medicare disputes under 42 U.S.C. 405(g), which would otherwise brook no exceptions whatsoever. *Shalala* v. *Illinois Council on Long Term Care, Inc.*, 529 U.S. 1, 15, 24 (2000); see Pierce § 15.3, at 1241, 1246-1255. The PLRA's text and context are different, and in any event respondent did not satisfy threshold requirements under *Illinois Council*: Among others, he did not (1) "present [his] claim [for relief] to the agency before raising it in court"; or (2) raise a claim in court that is "collateral" to the claim before the agency. *Illinois Council*, 529 U.S. at 15, 24.

The absence of unwritten exceptions to the PLRA's exhaustion requirement is also consistent with the PLRA's purposes. Congress enacted the PLRA to advance two principal goals: First, "to eliminate unwarranted federal-court interference with the administration of prisons," thereby "'affor[ding] corrections officials time and opportunity to address complaints internally before allowing the initiation of a federal case,'" *Woodford*, 548 U.S. at 93 (quoting *Nussle*, 534 U.S. at 525); and second, "'to reduce the quantity and improve the quality of prisoner suits.'" *Id.* at 94 (quoting *Nussle*, 534 U.S. at 524).

Like the requirement that exhaustion be "proper" that was at issue in *Woodford*, the requirement that exhaustion is mandatory rather than subject to judicial discretion advances these statutory goals. Mandatory exhaustion "gives prisoners an effective incentive to make full use of the prison grievance process and accordingly provides prisons with a fair opportunity to correct their own errors." *Woodford*, 548 U.S. at 94. It "reduces the quantity of prisoner suits because some prisoners are successful in the administrative process, and others are persuaded by the proceedings not to file an action in federal court." *Ibid.* And, it "improves the quality of those prisoner suits that are eventually filed," because it allows for the creation of an administrative record "while memories are still fresh" and when "evidence can be gathered and preserved." *Id.* at 95.

In short, the PLRA's text, history, caselaw, and purpose all confirm that a prisoner must properly exhaust available administrative remedies.

B. The PLRA Does Not Contain An Unwritten "Special Circumstances" Exception

Against that backdrop, the court of appeals erred in creating its unwritten "special circumstances" exception.

1. The PLRA prohibits courts from creating a freewheeling exception for whatever circumstances they deem to be "special." Such an approach has no basis in the statutory text, and "[p]rocedural requirements established by Congress for gaining access to the federal courts are not to be disregarded by courts out of a vague sympathy for particular litigants." *Baldwin Cnty. Welcome Ctr.* v. *Brown*, 466 U.S. 147, 152 (1984) (per curiam). Moreover, creating such an unwritten exception is particularly inappropriate here, because Congress expressly provided that a prisoner need not exhaust when remedies are not "available." 42 U.S.C. 1997e(a). "Where Congress explicitly enumerates certain exceptions to a general prohibition, additional exceptions are not to be implied, in the absence of evidence of a contrary legislative intent." *Hillman* v. *Maretta*, 133 S. Ct. 1943, 1953 (2013) (citation omitted).

The PLRA's history and context confirm that it does not contain a "special circumstances" exception. That approach would effectively resurrect the pre-PLRA scheme under which courts had discretion to excuse a failure to exhaust whenever "the court believe[d]" that exhaustion was not "appropriate and in the interests of justice." CRIPA § 7(a), 94 Stat. 352. That discretion "is now a thing of the past." *Booth*, 532 U.S. at 739. Congress pointedly eliminated that broad discretionary exception and replaced it with a mandate that prisoners properly exhaust available

administrative remedies. *Ibid*; see, *e.g.*, *Nussle*, 534 U.S. at 524 ("[E]xhaustion in cases covered by § 1997e(a) is now mandatory."). And "[j]udges cannot excuse a petitioner from its duty to exhaust a remedy that is made mandatory by a statute." Pierce § 15.3, at 1264.

2. a. The court of appeals' "special circumstances" exception fares no better if, as the court of appeals suggested, it is limited to situations where it would have been objectively reasonable for the prisoner to believe that participation in an internal investigation satisfied the exhaustion requirement. See Pet. App. 9-10. This "reasonable mistake" exception similarly lacks support in the PLRA's text, history, and context. Moreover, *Woodford* forecloses it: *Woodford* requires proper exhaustion of available administrative remedies, and the premise of the court of appeals' decision is that respondent did not properly exhaust.

Indeed, the departure from *Woodford* runs deeper, as the court of appeals' approach is materially identical to the "exhaustion *simpliciter*" doctrine that *Woodford* rejected. In *Woodford*, this Court held that the PLRA does not permit a prisoner to sue as soon as administrative remedies became unavailable, if those remedies became unavailable because the prisoner failed to comply with the prison's deadlines. See 548 U.S. at 88. Notably, the lower courts that had adopted this "exhaustion *simpliciter*" theory added a twist: a prisoner could not sue in federal court if he "deliberately" bypassed a prison's available procedures, but could sue if it was "debatable" whether he had exhausted and the prisoner "gave the prison grievance process a chance to work." *Id.* at 97 (citing *Ngo* v. *Woodford*, 403 F.3d 620, 629 (9th Cir. 2005) (*Ngo*),

rev'd, 548 U.S. 81 (2006)); *Ngo*, 403 F.3d at 629. This Court stated that this "interpretation neither has a statutory basis nor refers to a concept of exhaustion from an existing body of law." *Woodford*, 548 U.S. at 98.

The court of appeals' approach here is materially identical. There is no apparent difference between saying (as the court of appeals did here) that a failure to exhaust can be excused when the meaning of prison grievance procedures is subject to "reasonable" disagreement, Pet. App. 10, and saying (as lower courts did before *Woodford*) that a failure to exhaust can be excused when their meaning is "debatable," *Ngo*, 403 F.3d at 629. And there is likewise no real difference between saying (as the court of appeals did here) that proper exhaustion is unnecessary when the prisoner has "afford[ed] corrections officials time and opportunity to address complaints internally," Pet. App. 10, and saying (as lower courts did before *Woodford*) that it is unnecessary when the grievance process has had a "chance to work," *Ngo*, 403 F.3d at 629. *Woodford* equally forecloses both approaches.

b. General administrative law principles provide no basis for the court of appeals' "special circumstances" exception. As noted, although "Congress framed and adopted" the PLRA's exhaustion provision with "administrative law in mind," *Woodford*, 548 U.S. at 102, courts evaluating exhaustion under the PLRA lack the flexibility they might have under administrative law. See pp. 12-13, *supra*.

Relying on a concurrence in the judgment in *Woodford*, the court of appeals interpreted the PLRA to include a "reasonable mistake" exception that is believed was grounded in "well-settled" administrative

law. Pet. App. 9. But this was doubly wrong. First, the Court in *Woodford* disagreed with the concurrence's approach towards implying exceptions into the PLRA, and indeed rejected the view that the PLRA incorporates the administrative-law exception for constitutional claims. *Woodford*, 548 U.S. at 91-92 n.2. That ruling is binding.

Second, the court of appeals' "reasonable mistake" exception is not among the well-settled exceptions to exhaustion under administrative law. See *Woodford*, 548 U.S. at 98 (materially identical approach does "no[t] refer[] to a concept of exhaustion from an existing body of law"). For example, Justice Breyer's concurrence in *Woodford* listed numerous "well-established" exceptions, but did not mention any exception akin to the "reasonable mistake" exception adopted by the court of appeals. See 548 U.S. at 103-104 (noting exceptions in the case law for constitutional claims, futility, hardship, and inadequate or unavailable remedies); see, *e.g.*, *Sims* v. *Apfel*, 530 U.S. 103, 115 (2000) (Breyer, J., dissenting) (similar); *Kentucky* v. *U.S. ex rel. Hagel*, 759 F.3d 588, 599 (6th Cir. 2014) (similar); *Dawson Farms, LLC* v. *Farm Serv. Agency*, 504 F.3d 592, 606 (5th Cir. 2007) (similar); *Ace Prop. & Cas. Ins. Co.* v. *Federal Crop Ins. Corp.*, 440 F.3d 992, 1000 (8th Cir. 2006) (similar); *Avocados Plus Inc.* v. *Veneman*, 370 F.3d 1243, 1247 (D.C. Cir. 2004) (similar); *Gonzalez* v. *O'Connell*, 355 F.3d 1010, 1016 (7th Cir. 2004) (similar); Pierce § 15.2, at 1219-1241 (discussing exceptions).

Nor does caselaw from other circuits support the court of appeals' effort to ground its decision in administrative law. The court of appeals adopted the Second Circuit's "special circumstances" exception to

the PLRA, see Pet. App. 9-10, but it did not rest that exception on general administrative law principles. The Second Circuit first hinted at such an exception in *Berry* v. *Kerik*, 366 F.3d 85 (2004), when it asserted—without discussing administrative law—that although dismissal for failure to exhaust under the PLRA should ordinarily be without prejudice, dismissal should be with prejudice where a prisoner had "ample opportunity" to comply and "no special circumstances justified failure to exhaust." *Id.* at 88. In *Rodriguez* v. *Westchester County Jail Correctional Dep't*, 372 F.3d 485 (2004), the Second Circuit extended *Berry* to justify a prisoner's failure to exhaust on the basis of a reasonable mistake—again without discussing administrative law. *Id.* at 487. Subsequent "special circumstances" cases in the Second Circuit simply rely on circuit precedent. *E.g.*, *Macias* v. *Zenk*, 495 F.3d 37, 41 (2007); *Giano* v. *Goord*, 380 F.3d 670, 675 (2004); *Hemphill* v. *New York*, 380 F.3d 680, 688 (2004); *Johnson* v. *Testman*, 380 F.3d 691, 696 (2004). Notably, the Second Circuit has recognized that *Woodford* "questioned the continued viability" of its "special circumstances" exception. *Amador* v. *Andrews*, 655 F.3d 89, 102 (2011). Indeed, it has never found "special circumstances" since *Woodford*. *E.g.*, *Ruggiero* v. *County of Orange*, 467 F.3d 170, 176 (2006).[4]

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[4] To the extent it is relevant, it is well-settled in the habeas context that a reasonable mistake of law does not excuse a procedural default. The "cause" and "prejudice" standard requires "something *external* to the petitioner"; "some objective factor external to the defense [that] impeded * * * efforts to comply with the State's procedural rule." *Coleman* v. *Thompson*, 501 U.S. 722, 733 (1991) (citation omitted). But here, there was no external, objective impediment to respondent complying with the prison's grievance procedures: Those procedures were available, but respond-

c. The court of appeals' approach also undoes Congress's elimination of the pre-PLRA requirements that the prison's procedures be "plain." CRIPA § 7(a), 94 Stat. 352. A prison's procedures will be subject to a "reasonable mistake" defense only if a federal court concludes that the regulations are "confusing"—that is, not "plain." That simply restores a requirement that Congress deleted.

The "reasonable mistake" exception moreover would undermine several of the PLRA's purposes. First, Congress intended to get the federal courts (and the federal government) out of the business of dictating what procedures state prisons should adopt for resolving inmate disputes. But the court of appeals' approach puts federal courts right back into that business, and creates an incentive for state prisons to rewrite their procedures to "anticipate every potential misunderstanding that an inmate might have about a prison's administrative remedies and then foreclose every imaginable misunderstanding in writing." Pet. App. 26 (Agee, J., dissenting). Second, whereas Congress intended the PLRA to "discourage[] 'disregard of [the agency's] procedures,'" *Woodford*, 548 U.S at 89 (quoting *McCarthy*, 503 U.S. at 145), the court of appeals' approach would encourage prisoners to argue that the prison's stated procedures should be disregarded because they could be confusing. Although it is certainly a good practice for a prison to have procedural rules that are clear and easy to understand, under the PLRA that is no longer a federal mandate.

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ent failed to use them because of his own misunderstanding or ignorance.

That is not to say that prisons have *carte blanche* to adopt procedural requirements that are designed to "trip[] up all but the most skillful prisoners." *Woodford*, 548 U.S. at 102. If grievance procedures are so bewildering that no reasonable prisoner could discern them, or are an endless morass reminiscent of *Bleak House*, then an administrative remedy would not be "available" and a prisoner would not need to exhaust. Officials also cannot trip up prisoners by creating arbitrary or wholly inconsequential procedural impediments then dismissing a claim whenever a prisoner fails to comply perfectly with all of them, as *Woodford* requires proper compliance with "critical" procedural rules. *Id.* at 90; see *id.* at 95. And officials who intentionally thwart prisoners from successfully navigating the grievance process also could render those remedies "unavailable," or could be estopped from raising exhaustion as a defense. See *Hemphill*, 380 F.3d at 686 (discussing availability and estoppel in light of intimidation by prison guards).

d. The purposes of requiring a prisoner to exhaust available administrative remedies are not fully satisfied when a prisoner participates in an internal investigation but does not request an administrative remedy.

As the record here vividly confirms, internal investigations can be immensely helpful in "producing a useful administrative record," which is one important purpose underlying the PLRA's exhaustion requirement. *Jones*, 549 U.S. at 204. The administrative record here, for example, culminated in the prison's finding that another officer (Madigan) had engaged in conduct unbecoming of an officer in assaulting respondent while he was handcuffed. J.A. 195.

Nonetheless, the two different processes may lead to somewhat different administrative records, because an internal investigation ordinarily has a different focus and goals than a grievance process. In an excessive-force case like this, for example, both an internal investigation and a request for an administrative remedy would likely focus on guards' actions and whether they complied with relevant prison procedures. But the extent of any injuries the prisoner suffered may have less relevance in an internal investigation than in a grievance process, where the extent of injury may be a central focus. Medical records and other similar evidence of the extent of the prisoner's injuries thus may be lacking or less developed if the prisoner never requests a remedy, thus providing less help to a court when considering a claim for damages under Section 1983. See Pet. App. 23 (Agee, J., dissenting).

Internal investigations are also less likely to "allow[] prison officials an opportunity to resolve disputes concerning the exercise of their responsibilities before being haled into court" and "to reduce the number of inmate suits." *Jones*, 549 U.S. at 204; see *Nussle*, 534 U.S. at 528 ("promot[ing] administrative redress" is a "dominant" purpose of the PLRA). "An internal-affairs investigation may lead to disciplinary proceedings targeting the wayward employee but ordinarily does not offer a remedy to the prisoner who was on the receiving end of the employee's malfeasance." *Pavey* v. *Conley*, 663 F.3d 899, 905 (7th Cir. 2011). For example, under grievance procedures, a prisoner can ordinarily obtain some kind of in-kind remedy, such as the return of missing property, access to hygiene products he was wrongly denied, repairs to broken fixtures in a cell, or the like. Moreo-

ver, although grievance procedures in the federal prison system and some states ordinarily do not permit an award of money damages, see *Booth*, 532 U.S. at 734, 739-741, grievance procedures in other states—including Maryland—allow money damages. See J.A. 320 (defining "relief" to include "compensation"); Md. Code Regs. 12.07.01.10(D) ("monetary damages" available via the Inmate Grievance Office). The purposes of exhaustion are thus not fully satisfied when the prisoner participates in an internal investigation rather than filing a grievance.

Finally, it would be anomalous for the PLRA to compel prisoners to obey a prison's deadlines for filing a grievance—and thus to prohibit a prisoner from suing if he filed his grievance one day late—but to permit prisoners to ignore a prison's requirement that he "present his grievance in the proper forum." *Pavey*, 663 F.3d at 906. Just as rules dictating *when* that decisionmaking process must be initiated are important to prison administration, so are a prison's rules about *who decides* whether a grievance has merit. Because respondent failed to comply with that important procedural requirement about who decides a prisoner's grievance, respondent has failed to properly exhaust and his suit should be dismissed. *Woodford*, 548 U.S. at 84-85.

CONCLUSION

The judgment of the court of appeals should be reversed.

Respectfully submitted.

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